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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 287(LTS)

5 SEAN STEWART and ROBERT
6 STEWART,

7 Defendants.

-----x

8 New York, N.Y.
9 July 16, 2015
10 11:45 a.m.

11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
16 Southern District of New York

SARAH E. McCALLUM

17 BROOKE E. CUCINELLA

Assistant United States Attorney

18 PARK JENSEN BENNETT, LLP

Attorneys for Defendant S. Stewart

19 TAI PARK

20 TAMI STARK

21 LEVINE LEE, LLP

Attorneys for Defendant R. Stewart

22 SETH L. LEVINE

23 JILLIAN BERMAN

24 CHRISTOS G. PAPAPETROU

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(In open court; case called)

THE COURT: Good morning. Will everyone other than counsel please be seated.

THE DEPUTY CLERK: United States v. Sean Stewart and Robert Stewart.

THE COURT: Counsel.

MS. CUCINELLA: Brooke Cucinella and Sarah McCallum on behalf of the government. Good morning, your Honor.

THE COURT: Good morning, Ms. Cucinella and Ms. McCallum.

MR. PARK: Good morning. Tai Park and Tami Stark of Park Jensen Bennett for Mr. Sean Stewart.

THE COURT: Good morning, Mr. Park and Ms. Stark. Good morning, Mr. Stewart.

MR. LEVINE: Good morning, your Honor. Seth L. Levine and Jillian Berman from Levine Lee for Robert Stewart. I ask that my colleague Christos Papapetrou be allowed to appear today although he hasn't entered an appearance yet.

THE COURT: Good morning month, Mr. Levine, Ms. Berman and Mr. Papapetrou.

Please be seated, and greetings to all who are here in the spectator section and thank you all for your patience as the earlier matter ran longer than I expected.

So I gather that this is the first appearance for both of the defendants here; is that correct? So I need to address

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1 first appearance, arraignment, bail, and initial conference?

2 MS. CUCINELLA: That's correct, your Honor.

3 THE COURT: So --

4 MR. PARK: Your Honor, just so it is clear, they've
5 already been presented. This will be the first appearance on
6 the arraignment.

7 MS. CUCINELLA: I am sorry, your Honor. They were
8 arrested on a complaint back in May. We do have one bail issue
9 to address with respect to one the of the defendants, but
10 otherwise the government will be continuing bail as agreed upon
11 for Mr. Sean Stewart. For Mr. Robert Stewart it is our initial
12 presentment in front of you.

13 THE COURT: Very well. So I don't have to go through
14 the advice of basic rights because that has already been taken
15 care of on the initial conference?

16 MS. CUCINELLA: Yes. I apologize for the confusion,
17 your Honor. I thought you meant before your Honor.

18 THE COURT: No. Thank you.

19 Let's go straight to the arraignment of first Mr. Sean
20 Stewart. Will you please stand with your attorney.

21 Mr. Park, have you seen a copy of the indictment in
22 this case which is the superseder S1 15 CR 287?

23 MR. PARK: We have, your Honor, and I have reviewed it
24 with my client and we would waive its public reading.

25 THE COURT: Thank you. It is my practice to address

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1 matters directly with the client as well.

2 Mr. Stewart, would you please state your full name.

3 DEFENDANT S. STEWART: Sean Stewart.

4 THE COURT: How old are you?

5 DEFENDANT S. STEWART: 34 years old.

6 THE COURT: Have you reviewed the indictment, which
7 has the number S1 15 CR 287 up top?

8 DEFENDANT S. STEWART: I have, your Honor.

9 THE COURT: Have you discussed it with your attorney?

10 DEFENDANT S. STEWART: Yes, I have, your Honor.

11 THE COURT: Do you understand the charges against you?

12 DEFENDANT S. STEWART: I do, your Honor.

13 THE COURT: If you want me to, I will read the
14 indictment out loud for you here in court. Do you want me to
15 read it out loud to you?

16 DEFENDANT S. STEWART: No. Thank you, your Honor.

17 THE COURT: Thank you.

18 How do you now plead to the charges against you in the
19 indictment, not guilty or guilty?

20 DEFENDANT S. STEWART: Not guilty, your Honor.

21 THE COURT: Thank you. You can be seated.

22 DEFENDANT S. STEWART: Thank you.

23 THE COURT: Mr. Robert Stewart, will you please stand
24 with your attorneys.

25 First, Mr. Levine, have you reviewed the S1

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1 indictment?

2 MR. LEVINE: Yes, your Honor.

3 THE COURT: Have you discussed it with Mr. Stewart?

4 MR. LEVINE: Yes, your Honor.

5 THE COURT: Mr. Stewart, will you please state your
6 full name.

7 DEFENDANT R. STEWART: Robert Stewart.

8 THE COURT: How old are you, sir?

9 DEFENDANT R. STEWART: 60.

10 THE COURT: Have you read the indictment, which is
11 number S1 15 CR 287?

12 DEFENDANT R. STEWART: I have, your Honor.

13 THE COURT: Have you discussed it with your attorneys?

14 DEFENDANT R. STEWART: I have, your Honor.

15 THE COURT: Do you understand the charges against you?

16 DEFENDANT R. STEWART: Yes, I do, your Honor.

17 THE COURT: Do you want me to read it out loud to you
18 now here in open court?

19 DEFENDANT R. STEWART: No. Thank you, your Honor.

20 THE COURT: How do you now plead to the charges
21 against you, not guilty or guilty?

22 DEFENDANT R. STEWART: Not guilty, your Honor.

23 THE COURT: Thank you. You can be seated.

24 So there is a bail modification?

25 MS. CUCINELLA: Yes, your Honor. With respect to

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1 Robert Stewart, there are some changed circumstances,
2 specifically we have learned that his wife has become ill.

3 THE COURT: I am sorry to hear that.

4 MS. CUCINELLA: In accordance with that, the
5 government and defense counsel have reached a modified bail
6 package, simply that we are going to reduce the amount by which
7 the bond is secured to \$25,000. I believe it is currently
8 secured by \$100,000. We're doing that on consent.

9 We would also ask after conferring with the staff
10 downstairs on the fifth floor that your Honor order that the
11 bond not need to be re-signed by the two people who have
12 currently signed it, which includes Mrs. Stewart.

13 THE COURT: Very well then. Do I need to do anything
14 to release something that is being held as security now?

15 MS. CUCINELLA: We don't believe so. If that is the
16 case, we'll come back to your Honor. We're talking about this
17 regularly so at this point we don't believe that that is
18 necessary. Just ordering the release or the amount to go down
19 should do the trick.

20 THE COURT: So let me do that now. I will do that on
21 a bail disposition form.

22 (Pause)

23 THE COURT: What I have written is, Bail package is
24 modified as follows: Amount of security for bond is reduced to
25 \$25,000. The bond does not need to be re-signed. All other

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1 conditions remain in place as previously set.

2 Does that cover it?

3 MS. CUCINELLA: I believe so. Thank you, your Honor.

4 MR. LEVINE: Thank you very much, your Honor.

5 THE COURT: Let me just print this and sign it.

6 Is it five copies that I need, Ms. Ng.

7 THE DEPUTY CLERK: Yes, please.

8 THE COURT: If I don't do this now, I will not
9 remember to do it.

10 So let's turn now to the initial conference. Have you
11 discussed discovery and a proposed schedule for the next case?

12 MS. CUCINELLA: We have, your Honor. We have a
13 schedule to propose for your consideration. Specifically, we
14 propose that the government will produce all discovery by
15 July 30th. We have already produced some and we'll continue to
16 produce on a rolling basis to be completed by July 30th. We
17 then propose a motion schedule with the defendants motion being
18 due on August 28th, the government's response on
19 September 25th, and any reply on October 9th, with a pretrial
20 conference to follow at the convenience of the Court.

21 THE COURT: Now, a couple of questions, please. I am
22 just writing those dates down. What is the general nature of
23 the discovery?

24 MS. CUCINELLA: Certainly. There are both video and
25 phone recordings, bank records, brokerage records, phone

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1 records, and a database with materials from the investment
2 banks.

3 THE COURT: Any search warrants or postarrest
4 statements?

5 MS. CUCINELLA: There was a postarrest statement from
6 one of the defendants that was recorded on video, which will be
7 produced. There are search warrant applications. Those will
8 be produced as well.

9 THE COURT: What is the nature of the anticipated
10 motion practice? Specifically, I ask this because I want to
11 know whether we need to anticipate evidentiary proceedings.

12 MS. CUCINELLA: I am going to defer to defense counsel
13 on that.

14 THE COURT: Thank you.

15 MR. PARK: Your Honor, it is a bit early to know for
16 sure. There is not likely to be a need for an evidentiary
17 hearing. I would expect certainly a bill of particulars motion
18 to be filed with great parity with respect to exactly what some
19 of the terms of the indictment are. Our client did not make
20 postarrest statements so I don't expect there will be any
21 motion from our side with respect to that. There may be a
22 motion for severance, but again I think it is a little
23 premature. I do not anticipate there being an evidentiary
24 hearing on these motions.

25 THE COURT: Mr. Levine.

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1 MR. LEVINE: I agree with my colleague that is a
2 little premature. We're still considering the issue of the
3 postarrest statement. So we haven't made a file determination
4 on that, but we think it is quite possible there will not be a
5 need for a hearing. We're still considering the issue. I do
6 agree there may be other legal motions made given the nature of
7 the indictment.

8 THE COURT: Very well. What I am going to do is set
9 two pretrial conference dates, one for some time in the second
10 week of September after the motion papers have been filed so
11 that we can come back together to talk about any need for an
12 evidentiary hearing and schedule anything that may be
13 necessary. For motions that do involve factual issues, I
14 typically don't want all of the briefing completed before the
15 evidentiary hearing because that is inefficient. So we would
16 modify the briefing schedule in relation to the hearing date.
17 If it turns out no evidentiary hearing is necessary and we
18 don't have anything else productive to talk about, we can
19 always cancel that conference date but I rather have it on the
20 calendar so that we don't slip into anything inefficient.

21 So, Ms. Ng, may I have a date in either the week that
22 ends September 11th or the week after that preferably the week
23 of the 7th.

24 THE DEPUTY CLERK: Tuesday, September 8th, 2015 at
25 3:00 p.m.

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1 THE COURT: Is everyone available on September 8th at
2 3:00?

3 MR. PARK: Yes, your Honor.

4 THE COURT: I will set that conference for
5 September 8th at 3:00 and then we'll set a conference at the
6 end of October or the very beginning of November.

7 May I have a very beginning of November conference
8 date, Ms. Ng?

9 THE DEPUTY CLERK: Thursday, November 5th, 2015 at
10 3:15.

11 THE COURT: Is everyone available on November 5th at
12 3:15?

13 MR. PARK: We are, your Honor.

14 MR. LEVINE: Yes, your Honor.

15 THE COURT: Very well then. Is there a request for
16 exclusion from speedy trial computations of the time from now
17 until November 5th?

18 MS. CUCINELLA: Yes, your Honor, to allow the
19 defendants to review the discovery produced by the government
20 and to consider whether they will be making any motions and
21 then to in fact make those motions.

22 THE COURT: Any objection?

23 MR. PARK: None from us, your Honor.

24 MR. LEVINE: No, your Honor.

25 THE COURT: The application is granted for the reasons

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1 summarized by Ms. Cucinella. I find that the ends of justice
2 served by the granting of an exclusion from speedy trial
3 computations for the period from today's date through
4 November 5th, 2015 outweigh the best interest of the public and
5 each of the defendants in a speedy trial. Accordingly, the
6 time period is excluded prospectively. If for some reason of
7 course there are no motions to be made, we can use that
8 September conference date to figure out where we go next or if
9 anything else needs to be addressed and we can address between
10 now and the November date.

11 MR. PARK: Is there anything else that we need to take
12 up together this morning?

13 MS. CUCINELLA: Not from the government.

14 MR. PARK: Nothing on our behalf, your Honor.

15 MR. LEVINE: No. Thank you very much, your Honor.

16 THE COURT: Thank you. I look forward to seeing you
17 early November if not before. Keep well everyone.

18 THE DEPUTY CLERK: All rise.

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